Supreme Court, U.S.
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No. _____ OFFICE OF THE CLERK

In The

Supreme Court of the United States

STATE OF ALABAMA,

Petitioner,

v.

MICHAEL HERMAN BOZEMAN,

Respondent.

On Petition For A Writ Of Certiorari To The Supreme Court Of Alabama

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

The Interstate Agreement on Detainers Act (IAD) is an agreement between 48 states, including the State of Alabama, the District of Columbia, and the federal government, entered by the party states to encourage the expeditious and orderly disposition of untried indictments, informations, or complaints and to encourage the determination of the proper status of any and all detainers based on such charges, in order to eliminate uncertainties which obstruct programs designed to treat and rehabilitate prisoners. Article IV(e) of the IAD provides that an indictment should be dismissed, with prejudice, if a prisoner is returned to a sending state before the resolution of pending charges. The following questions are presented for this Court's consideration:

1. Does transfer of federal custody to state custody for one day for purposes of arraignment, and transfer back to federal custody before the disposition of outstanding charges, a technical violation of the Interstate Agreement on Detainers Act, require dismissal of pending charges, even when there is no harm to the prisoner either alleged or demonstrated?

2. Is a state compelled to follow federal law in interpreting the provisions of the Interstate Agreement on Detainers Act, because the Act is a congressionally sanctioned interstate compact the interpretation of which presents a federal question?

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PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF ALABAMA

The State of Alabama respectfully petitions for a writ of certiorari to review the judgment of the Alabama Supreme Court in this case.

OPINIONS BELOW

The decision of the Alabama Court of Criminal Appeals affirming Bozeman's convictions and sentences is an unpublished memorandum opinion, and is contained in the Appendix at App. 15-26. The decision of the Alabama Supreme Court reversing Bozeman's convictions is not yet reported, but can be found at *Ex parte Bozeman*, No. 1971759, 2000 WL 429936 (Ala. Apr. 21, 2000), and is contained in the Appendix at App. 1-14.

JURISDICTION

The decision of the Alabama Supreme Court reversing Bozeman's convictions was entered on April 21, 2000. A petition for rehearing was denied on June 30, 2000. Appendix at App. 30. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The following Constitutional provision is involved in this case:

The Compact Clause of the United States Constitution, which provides:

> No state shall, without the consent of congress, lay any duty of tonnage, keep troops, or ships of war in time of peace, enter into any agreement or compact with another state, or with a foreign power, or engage in war, unless actually invaded, or in such imminent danger as will not admit of delay.

U.S. Const., art. I, § 10, cl. 3. The following statutory provisions are involved in this case, as well:

Section 2111 of Title 28 of the United States Code, which provides:

> On the hearing of any appeal or writ of certiorari in any case, the court shall give judgment after an examination of the record without regard to errors or defects which do not affect the substantial rights of the parties.

28 U.S.C. § 2111.

The Interstate Agreement on Detainers Act, also referred to as the Uniform Mandatory Disposition of Detainers Act, which is codified in Alabama in Sections 15-9-80 through 15-9-88 of the 1975 Code of Alabama, and is contained in the Appendix at App. 32-47.

Rule 45 of the Alabama Rules of Appellate Procedure, which provides:

> No judgment may be reversed or set aside, nor new trial granted in any civil or criminal case on the ground of misdirection of the jury, the giving or refusal of special charges or the improper admission or rejection of evidence, nor for error as to any matter of pleading or procedure, unless in the opinion of the court to which the appeal is taken or application is made, after an examination of the entire cause, it should appear that the error complained of has probably injuriously affected the substantial rights of the parties.

STATEMENT OF THE CASE

This case arises out of the transfer of custody of Michael Bozeman between federal authorities and state authorities in Covington County, Alabama, and involves the application of the Interstate Agreement on Detainers Act, to which both the federal government and the State of Alabama are parties.

A. Relevant Events Occurring Prior To Trial And In The Trial Court

On June 15, 1995, Michael Herman Bozeman was arrested on a federal charge of intimidating a witness, and he was placed in the county jail in Covington County, Alabama, under a hold by federal authorities. (HR. 199-200, 205, 214)[1] On June 16, 1995, he was also arrested

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[1] "HR." refers to the transcript from the hearing on Bozeman's motions to dismiss his indictment on the grounds

on federal charges of conspiracy to possess with the intent to distribute methamphetamine and his custody was transferred to federal authorities, but he was placed in the county jail in Montgomery County, Alabama. (HR. 209; C. 13, 102) Subsequently, on November 3, 1995, Bozeman pleaded guilty to the federal drug charge and he was sentenced to not less than 5 years nor more than 40 years; the federal charge of intimidating a witness was apparently dismissed. (C. 13, 102, 182)

Bozeman was indicted by the September 1996 Grand Jury of Covington County on two counts of discharging a firearm into an occupied dwelling, two counts of discharging a firearm into an unoccupied vehicle, and one count of discharging a firearm into an unoccupied dwelling (Case No. 97-16). (HR. 207; C. 1-3) These charges arose out of several incidents that occurred in June of 1995 and are the charges that formed the basis of this petition.[2] On October 10, 1996, the Covington County

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the Interstate Agreement On Detainers Act had been violated; "C." refers to the clerk's record on appeal; "Arr." refers to the record from the arraignment in this case; and, "R." refers to the record from the trial of this case. All of these documents are a part of the record on appeal in this case.

[2] In September 1995, while Bozeman was in federal custody, he was indicted by a Covington County Grand Jury for the unlawful possession or receipt of a controlled substance (Case No. CC-95-350) for an incident occurring in May of 1995. (HR. 208-09) Temporary custody of Bozeman was obtained from the federal authorities by Covington County authorities in November 1995 for the specific purpose of arraignment, and Bozeman was arraigned and appointed counsel on that charge. (HR. 209-10; C. 177-78) Subsequent to his arraignment and before the disposition of the state drug charge, Bozeman was

District Attorney requested that a detainer be placed on Bozeman so that he could be arraigned in Covington County on the shooting charges. (HR. 211; C. 180) The Covington County District Attorney specifically requested that Bozeman be made available for his upcoming arraignment on the shooting charges and requested that all necessary forms be mailed to her for completion and return to the proper federal authorities in sufficient time before arraignment for the State to obtain Bozeman. (C. 180) The federal authorities in Atlanta responded that a detainer had been filed on Bozeman pursuant to the District Attorney's "October 29, 1996" request. (HR. 211-12) The record contains a notice to Bozeman of untried indictments and the right to request disposition of the charges in the shooting cases pursuant to Article III of the IAD, which he signed on November 4, 1996, acknowledging receipt. (C. 75)

Because Bozeman had been transferred from the Atlanta Federal Penitentiary to the federal prison in Marianna, Florida, the Covington County District Attorney's request for a detainer did not reach Bozeman until January of 1997. (HR. 211-12) On January 8, 1997, the District Attorney sent a letter and temporary custody form to the federal prison authorities in Marianna, Florida. (C. 179) The letter and form indicated that Bozeman was needed

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returned to the custody of the federal authorities. (HR. 214) In June of 1996, the state drug charge was nolle prossed or dismissed. (HR. 213-14) At no time before his state drug charge was nolle prossed did Bozeman raise any allegations that his transfer from federal custody to state custody and back to federal custody violated the Interstate Agreement on Detainers Act (IAD).

for arraignment and appointment of counsel in the shooting case, case number CC-97-16, and that Bozeman would be picked up on January 15, 1997 and returned to federal authorities one day later, on January 16, 1997. (C. 179) It was not until January 23, 1997, however, that temporary custody of Bozeman was transferred from federal authorities to Covington County authorities. (HR. 201, 203, 215) The next day, January 24, 1997, Bozeman was arraigned on the shooting charges and custody of Bozeman was transferred back to the federal authorities. (HR. 214-15; Arr. 7-12)

Also on January 24, 1997, Bozeman filed a pro se motion to dismiss his indictment in which he asserted as grounds for dismissal violations of Articles IV(e) and V(e) of the Interstate Agreement on Detainers. (C. 8-14) At arraignment, appointed counsel for Bozeman indicated that there were some possible questions about whether the IAD had been properly followed and he requested permission to further investigate and research that issue. (Arr. 4-6) The trial court permitted Bozeman to reserve that issue for post-arraignment consideration because counsel for Bozeman had just been appointed that morning. (Arr. 4-6)

On February 21, 1997, counsel for Bozeman filed Defendant's Motion To Dismiss, requesting that the indictments against Bozeman charging him with the several shooting violations be dismissed. (C. 73-75) As grounds in support of his motion, Bozeman alleged that Article IV(e) of the IAD required dismissal because he had been brought to Covington County to face the shooting charges and he had thereafter been returned to his original place of incarceration prior to being tried on the

shooting charges. On February 25, 1997, Bozeman filed a Memorandum Brief In Support Of Defendant's Motion To Dismiss, again alleging violations of the IAD. (C. 79-85)

On February 27, 1997, Bozeman was again released from federal custody to the custody of Covington County officials, this time for trial on the shooting charges. (HR. 202, 215) Before trial began, in an in-chambers discussion, Bozeman's motions to dismiss on the grounds that the IAD had been violated were discussed. (R. 11-13) The trial court denied the motions at that time, without a hearing, so that trial could proceed, but it reserved to Bozeman the right to put on testimony and evidence in support of his motions after the completion of the trial and specifically reserved to him the right to raise the issue by post-trial motion. (HR. 11-13)

Bozeman's trial proceeded on February 27, 1997, and, on February 28, 1997, the jury convicted Bozeman on all five counts of the indictment. (C. 120-21; R. 192-93) At the conclusion of the trial, the trial court ordered that Bozeman remain in the custody of Covington County officials until the questions raised on the IAD were resolved and until sentencing was completed. (R. 194-96) On March 12, 1997, a hearing was held on Bozeman's motions to dismiss his indictment based on alleged violations of the IAD. (HR. 197-239) On April 25, 1997, Bozeman filed a Renewal Of Defendant's Motion To Dismiss in which he again asserted violations of the IAD. (C. 104-04A) On May 16, 1997, the trial court denied Bozeman's motions to dismiss the indictment in a written order. Appendix at App. 27-29. The trial court found that the only issue before it was whether Article IV of the IAD had been violated. Appendix at App. 27. Finding that the goals of

the IAD had been met and that Bozeman had failed to demonstrate any prejudice, the trial court denied the motions to dismiss. Appendix at App. 28-29.

Bozeman was sentenced on May 21, 1997 to five concurrent ten-year sentences, those sentences to run consecutively to the federal sentence that Bozeman was then serving. Also on May 21, 1997, Bozeman filed a Motion For Judgment Notwithstanding The Verdict Or In The Alternative For New Trial, in which he again asserted violations of the IAD by his failure to be tried on the shooting charges before being returned to the custody of federal officials. (C. 108-09)

B. The Alabama Court Of Criminal Appeals

Bozeman timely appealed to the Alabama Court of Criminal Appeals. Among the issues raised in his brief was the argument that his January 1997 transfer from federal officials to state officials and back to federal officials, without disposing of the pending indictment, violated the Interstate Agreement on Detainers and that his indictment should have, therefore, been dismissed. The Alabama Court of Criminal Appeals rejected Bozeman's argument in a unanimous opinion. The court found, in relevant part, that, while, "[t]echnically, Article IV(e) creates no exception to the requirement that a jurisdiction that acquires a prisoner under the [IAD][3] should try that

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[3] Throughout its opinion, the Alabama Court of Criminal Appeals refers to the Uniform Mandatory Disposition Of Detainers Act, or "UMDDA". The Uniform Mandatory Disposition Of Detainers Act and the Interstate Agreement On

prisoner on pending indictments before returning that prisoner to his original place of imprisonment," "such a rigid interpretation of Article IV(e) serves no purpose in conforming with the intent nor spirit of the [IAD]." *Bozeman v. State*, CR-96-1611, mem. op. at 3 (Ala. May 8, 1998). See Appendix at App. 19. The court "acknowledge[d] that a split exist[ed] among the federal circuits on whether a one-day or more transfer between a sending and receiving jurisdiction without resolution of the receiving jurisdiction['s] pending charges violate[s] the [IAD]," and, based on the goals behind the IAD, it decided "to follow the rationale from those circuits which hold that a brief custody transfer between jurisdictions does not always require a dismissal of the charge with prejudice." *Id.* at 4. (App. 21) Noting that the transfer of Bozeman in this case did not interfere with the purposes of the IAD and that Bozeman had asserted no prejudice from the transfers until his appeal, and even then, only perfunctorily so, the Alabama Court of Criminal Appeals rejected Bozeman's argument and affirmed Bozeman's convictions. *Id.* at 4, 6. (App. 21-22, 26) Bozeman's application for rehearing in that court was denied on June 19, 1998. Appendix at App. 31.

C. The Alabama Supreme Court

Bozeman applied for certiorari in the Alabama Supreme Court, which was granted by that court on

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Detainers Act are one and the same act. For purposes of this petition, the State refers to the Act throughout as the Interstate Agreement On Detainers Act, or the IAD.

February 19, 1999. In his petition for a writ of certiorari, Bozeman's sole issue was his argument that there had been a violation of the Interstate Agreement on Detainers Act requiring dismissal of his indictment. On April 21, 2000, the Alabama Supreme Court, in a per curiam, 5 to 3 decision,[4] reversed Bozeman's convictions, holding that the violation of the IAD required dismissal of Bozeman's indictment. In its opinion, the Alabama Supreme Court first held that, because the United States Supreme Court "had not yet ruled on how the detainer statute should be interpreted," it "was free to select the interpretation it consider[ed] most sound," implying it was not bound by federal law in its construction of the statute. *Ex parte Bozeman*, No. 1971759, at 6 (Ala. Apr. 21, 2000). (App. 6) The court did, however, note that there was a split of authority in the federal circuits and, in deciding the issue, it relied on the law as interpreted by a Pennsylvania federal district court, holding that any violation of the IAD's "anti-shuffling" or "anti-shuttling" provisions required dismissal of the indictment. *Id.* at 6-8. (App. 6-8) In rejecting the State's arguments, the Alabama Supreme Court did not consider the State's argument that Bozeman had not demonstrated any harm from the technical violation of Article IV(e) of the IAD, suggesting that the State was arguing that the brief violation of the Act could simply be ignored. *Id.* at 8. (App. 8) The Court also held that its conclusion was "consistent with the purpose of the Act to protect a prisoner's constitutional right to a

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[4] The ninth justice, Justice Jean Brown, recused herself and did not participate in the decision in this case because she was sitting on the Court of Criminal Appeals at the time that court rendered its decision in this case.

fair and speedy trial," but it in no way explained how the one-day technical violation of the IAD impacted, affected, or even implicated Bozeman's right to a fair or speedy trial. *Id.* at 8. (App. 8) Finally, the court applied state statutory construction law in reaching its decision. *Id.* at 8-9. (App. 9)

Justice See wrote an opinion in dissent, which was joined by Chief Justice Hooper. *Id.* at 10-13. (App. 10-14) In his dissent, Justice See first acknowledged that the Interstate Agreement on Detainers Act was subject to federal construction and the court was, therefore, bound to follow federal precedent in interpreting the IAD. *Id.* at 10. (App. 10-11) He then noted that the Fifth Circuit had already decided the issue in *Sassoon v. Stynchombe*, 654 F.2d 371 (5th Cir. 1981), and that that decision was binding precedent in the Eleventh Circuit, Alabama being a part of the Eleventh Circuit. *Id.* at 10-12. (App. 11-12) Relying on the reasoning in *Sassoon*, and noting that Bozeman had not argued that he was prejudiced by his transfer back to federal custody before his trial, and that the record did not support such a finding, Justice See opined that the State's technical violation of Article IV(e) of the IAD violated no legitimate interest of Bozeman and did not prejudice him in any way. *Id.* at 10-12. (App. 12-13) Justice See concluded: "Despite the State's technical violation of Article IV(e) of the IAD, federal interpretation of the IAD, which this Court is bound to follow, dictates that where the violation does not defeat a legitimate interest of the prisoner and where the violation permits the prisoner to participate in a rehabilitation program, the IAD does not require the dismissal of the charges against the prisoner." *Id.* at 13. (App. 14)

The State filed an application for rehearing emphasizing its arguments that the court was bound by federal law in deciding the issue before it; that the court had decided contrary to the majority of the federal circuits deciding the issue, including the Eleventh Circuit, the State of Alabama being a part of the Eleventh Circuit; that the technical violation of the IAD did not require dismissal of the indictment because the purpose of the Act had not been defeated by the technical violation in this case; and, that the court had erred in failing to apply a harmless error analysis to the issue. The State's rehearing application was denied without comment on June 30, 2000. (App. 30)

REASONS FOR GRANTING THE PETITION

"The Interstate Agreement on Detainers is a compact among 48 States, the District of Columbia, Puerto Rico, the Virgin Islands, and the United States." *Carchman v. Nash*, 473 U.S. 716, 719 (1985). The IAD "is based on a legislative finding that 'charges outstanding against a prisoner, detainers based on untried indictments, informations or complaints, and difficulties in securing speedy trial of persons already incarcerated in other jurisdictions, produce uncertainties which obstruct programs of prisoner treatment and rehabilitation." *Id.* at 719-20. "Accordingly, the purpose of the [Act] is 'to encourage the expeditious and orderly disposition of [outstanding] charges and determination of the proper status of any and all detainers based on untried indictments, informations or complaints.' " *Id.* at 720. The State of Alabama is a party to the IAD and it has codified the provisions of

the Act. *See*, ALA. CODE §§ 15-9-80 through 88 (1975). See Appendix at 32-47.

Article IV(e) of the IAD provides:

> (e) If trial is not had on any indictment, information or complaint contemplated hereby prior to the prisoner's being returned to the original place of imprisonment pursuant to article V(e) hereof, such indictment, information or complaint shall not be of any further force or effect, and the court shall enter an order dismissing the same with prejudice.

In this case, Michael Herman Bozeman was transferred from federal custody to the custody of officials in Covington County, Alabama, for the purposes of arraignment and the appointment of counsel, pursuant to a detainer requested by the Covington County District Attorney. The day after custody was obtained by the officials in Covington County, Bozeman was arraigned and appointed counsel, and his custody was returned to federal officials, without the disposal of the outstanding indictment. This amounted to a technical violation of the IAD. Bozeman, however, never argued that he was prejudiced by this violation of the IAD, there is no evidence in the record to support an allegation of prejudice, the violation did not defeat the purposes behind the IAD, and any violation of the IAD was harmless to Bozeman.

This Court should grant certiorari on the important issue of whether a technical violation of the Interstate Agreement on Detainers Act requires dismissal of an indictment, even when no prejudice to the defendant is demonstrated, because there is a split among the federal courts of appeal on the issue and because there is a

similar split among the highest courts of several of the participating states. Moreover, this Court should grant certiorari to decide the issues raised because the decision of the Alabama Supreme Court is in conflict with prior decisions of this Court on the issues of whether federal law should be applied to the determination of the issue raised and on the issue of the application of harmless error to the violation of a statutory provision. Finally, this Court should grant certiorari to resolve the issue of whether a technical violation of the IAD requires dismissal of an indictment, regardless of any prejudice to the prisoner, because the issue is an important one having a far-reaching impact on criminal prosecutions throughout the states and the federal government.

A. Certiorari Should Be Granted In This Case To Resolve The Split In The Federal Circuits.

Rule 10(a) of the rules of this Court provides that one compelling reason for granting certiorari is if a decision of one federal court of appeals is in conflict with another court of appeals. Sup. Ct. R. 10(a). Over eight years ago, Justice White, dissenting from the denial of certiorari in *Taylor v. United States*, 504 U.S. 991 (1992), noted that there was a conflict in the federal courts of appeal "as to the propriety of dismissal when technical violations of the IAD occur." In *Taylor*, the First Circuit Court of Appeals held that Article IV(e) of the Interstate Agreement on Detainers Act did not compel dismissal of the indictment against the petitioner, who was taken from state custody on a writ of habeas corpus ad prosequendum, or a detainer, for arraignment in federal court on an unrelated crime and returned to state custody the same

day. In his dissent, Justice White urged that review of the issue was mandated, noting:

> One of the Court's duties is to do its best to see that the federal law is not being applied differently in the various circuits around the country. The Court is surely not doing its best when it denies certiorari in this case, which presents an issue on which the Courts of Appeals are recurringly at odds.

This conflict among the various federal circuits still exists today, and the issue, which is squarely presented in this case, requires resolution.[5]

The majority of federal circuits addressing the issue of whether a technical violation of the IAD requires dismissal of the indictment have held that such violations do *not* merit dismissal. *See, United States v. Daniels*, 3 F.3d 25, 27-28 (1st Cir. 1993) ("[A] brief interruption in state prison confinement for purposes of arraignment, where the prisoner is returned to state custody the same day, does not violate the IAD."); *United States v. Roy*, 771 F.2d 54, 60 (2d Cir. 1985) (A one-day interruption of state prison confinement by transfer to federal custody for a

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[5] Recognizing the importance of equal application of the IAD, this Court has granted certiorari in other cases involving the Interstate Agreement on Detainers Act to resolve conflicts in its interpretation and application, *see, e.g., Reed v. Farley*, 512 U.S. 339, 346 (1994); *Cuyler v. Adams*, 449 U.S. 433, 435-36 (1981); *United States v. Mauro*, 436 U.S. 340, 349 (1978), and it should likewise grant certiorari in this case to ensure equal application of the IAD among the participating states and federal government.

motion hearing posed no threat to prisoner's rehabilitation sufficient to constitute a violation of the IAD.), *cert. denied*, 475 U.S. 1110 (1986); *Sassoon v. Stynchombe*, 654 F.2d 371, 375 (5th Cir. 1981) ("A brief removal of a prisoner to the receiving jurisdiction and his prompt return to the sending jurisdiction after arraignment and prior to trial is consonant with the intention of the Interstate Agreement on Detainers."); *United States v. Taylor*, 173 F.3d 538 (6th Cir.) (returned to custody the same day, no violation of IAD), *cert. denied*, 120 S. Ct. 448 (1999); *United States v. Roy*, 830 F.2d 628 (7th Cir. 1987) (one-day transfer, no violation of IAD), *cert. denied*, 484 U.S. 1068 (1988); *Baxter v. United States*, 966 F.2d 387, 389 (8th Cir. 1992) (returned to custody the same day, no violation of IAD); *United States v. Johnson*, 953 F.2d 1167 (9th Cir.) (one-day transfer, no violation of IAD), *cert. denied*, 506 U.S. 879 (1992). Other circuits have held to the contrary. *See, e.g., United States v. Thompson*, 562 F.2d 232, 234 (3d Cir. 1977), *cert. denied, sub nom. United States v. Sorrell*, 436 U.S. 949 (1978); *United States v. Schrum*, 638 F.2d 214, 215 (10th Cir. 1981). The decisions of the majority of the federal courts of appeal, holding that a technical violation of the IAD does not require dismissal of the indictment where there is no prejudice to the defendant, is in keeping with the main purposes behind the IAD, is the better reasoned approach to the issue, strikes a better balance between the interests of the states and federal government and the prisoner, and is the approach that should be adopted by this Court. A decision by this Court in accordance with the majority of the decisions on the issue would require a reversal of the Alabama Supreme Court's decision in this case.

B. Certiorari Should Be Granted In This Case To Resolve The Split In The State Supreme Courts.

This Court should also grant the State's petition for a writ of certiorari on the issue raised because there is a conflict among several of the state supreme courts of states that are parties to the Interstate Agreement on Detainers Act. *Compare, Ex parte Bozeman*, No. 1971759, 2000 WL 429936 (Ala. Apr. 21, 2000) (the decision in this case) (Because an untried indictment was pending against Bozeman when he was returned to federal custody, the pending charges should have been dismissed with prejudice pursuant to Article IV(e)), and, *State v. Burrus*, 729 P.2d 935, 937 (Ariz. 1986) ("Considering both the express purpose of the statute and its plain language," dismissal of the indictment would be appropriate for violations of Article IV(e)), with *State v. Sassoon*, 242 S.E.2d 121, 123 (Ga. 1978) ("A brief removal of a prisoner to the receiving jurisdiction and his prompt return to the sending jurisdiction after arraignment and prior to trial is consonant with the intention of the Interstate Agreement on Detainers . . . ," and dismissal of the indictment is not required under such circumstances, absent any prejudice to the prisoner.), and *Derring v. State*, 619 S.W.2d 644, 646 (Ark. 1981) (prisoner who was not prejudiced by return to federal prison before state charges were resolved was not entitled to dismissal of the charges). This conflict among the various participating states to the IAD leads to inconsistent and unfair results not intended by the parties to the IAD. For instance, if there is a violation of the IAD by the State of Alabama, whether that violation undermined the purposes behind the IAD or prejudiced the prisoner under indictment in this State, under the decision in this

case, the charges against the prisoner, no matter how serious, must be dismissed, and the prisoner can, in effect, get away with murder. If that same prisoner were facing charges across the border in Georgia, however, and the State of Georgia placed a detainer on him, brought him into the State, but returned him to the sending state without disposing of the pending charges, regardless of whether that technical violation of the IAD undermined the purposes of the IAD or prejudiced the prisoner, the prisoner could still be tried and convicted of his crimes in Georgia. Such unfair and inconsistent results are, in fact, contrary to the purposes of the IAD and should not be permitted to continue. "The IAD's purpose – providing a nationally uniform means of transferring prisoners between jurisdictions – can be effectuated only by nationally uniform interpretation." *Reed v. Farley*, 512 U.S. 339, 348 (1994). This Court should, therefore, grant certiorari and resolve the conflict that exists among the various participating states.

C. This Court Should Grant Certiorari Because The Decision Of The Alabama Supreme Court Is In Conflict With Prior Decisions of This Court.

In its opinion in this case, the Alabama Supreme Court ignored this Court's precedent holding that the Interstate Agreement on Detainers Act is a federal law subject to federal construction, and held that it "was free to select the interpretation it considere[d] most sound" in interpreting the IAD. The Alabama Supreme Court relied on state statutory construction law in reaching its decision and completely ignored applicable federal harmless

error law. For these reasons, this Court should grant certiorari and reverse the decision of that court.

In *Cuyler v. Adams*, 449 U.S. 433 (1981), this Court held that congressional consent transforms an interstate compact within the Compact Clause of the United States Constitution, art. I, § 10, cl. 3, into a law of the United States and that construction of an interstate agreement under the Compact Clause presents a federal question. *Id.* at 438. This Court specifically concluded in *Cuyler* that, because the Interstate Agreement on Detainers Act "was intended to be a grant of consent under the Compact Clause, and because the subject matter of the Act is an appropriate subject for congressional legislation, we conclude that the Detainer Agreement is a congressionally sanctioned interstate compact the interpretation of which presents a federal question." *Id.* at 442 (footnote omitted). The Alabama Supreme Court, in direct contradiction of this holding, held that it was free to interpret the IAD as it chose, because this Court had not specifically addressed the issue raised concerning a technical violation of the IAD, and it proceeded to address the issue using primarily Alabama statutory construction law. In doing so, the Alabama Supreme Court not only ignored this Court's prior decisions concerning the purposes behind and construction of the IAD, it also ignored this Court's decisions on statutory construction, on technical violations of statutes or rules, and on application of the harmless error rule to violations of statutes. *See, e.g., Carchman v. Nash*, 473 U.S. 716, 348 (1985) (purposes behind and construction of IAD); *New York v. Hill*, 120 S. Ct. 659, 666 (2000) (federal law applies to the construction of IAD; technical violation of IAD does not require

dismissal of indictment); *United States v. Mauro*, 436 U.S. 340, 350-51 (1978) (reasons for and purposes behind IAD); *Reed v. Farley*, 512 U.S. 339, 348 (1994) (reasons for and purposes behind IAD; application of harmless error analysis to IAD violation); *Peguero v. United States*, 526 U.S. 23, 27-29 (1999) (application of harmless error analysis to violation of Rule 32(a)(2) of Federal Rules of Criminal Procedure); *United States v. Lane*, 474 U.S. 438, 443-46 (1986) (application of harmless error analysis to violation of Rule 8(b) of Federal Rules of Criminal Procedure); *United States v. Mantalvo-Murillo*, 495 U.S. 711, 716-22 (1990) (application of harmless error analysis to violation of Rule 6 of Federal Rules of Criminal Procedure and 18 U.S.C. §§ 6002, 6003); and, *Bank of Nova Scotia v. United States*, 487 U.S. 250, 255-56 (1988) (application of harmless error analysis to violation of Bail Reform Act of 1984, 18 U.S.C. § 3142(e)).

As the cited cases illustrate, the construction of the IAD is controlled by federal law and it should be constructed to effectuate its purposes, not to defeat them. Moreover, the IAD, as a matter of federal law, is subject to harmless error analysis as demonstrated by the prior decisions of this Court, cited in the previous paragraph, and by the federal harmless error rule. *See* 28 U.S.C. § 2111. As this Court noted in *Bank of Nova Scotia*, "[i]t would be inappropriate to devise a rule permitting federal courts to deal more sternly with nonconstitutional harmless errors than with constitutional errors that are likewise harmless." 487 U.S at 256. Finally, technical violations of the IAD do not require strict compliance with the wording of the statute where there is no harm to the prisoner and the state could suffer great harm by being

required to let a possible criminal go free. *See, e.g., Reed v. Farley*, 512 U.S. 339, 358 (1994) (Scalia, J., concurring in part and concurring in the judgment) ("If there was ever a technical rule, the IAD's 120-day limit is one." Dismissal of the indictment was not required because of the technical violation of this provision.) Because the Alabama Supreme Court's decision in this case was in conflict with all of these principles of the applicable established federal law, this Court should grant the State's petition for certiorari and reverse its decision.

D. This Court Should Grant Certiorari Because The Issue Is An Important One Requiring A Nationally Uniform Interpretation.

"The IAD's purpose – providing a nationally uniform means of transferring prisoners between jurisdictions – can be effectuated only by nationally uniform interpretation." *Reed v. Farley*, 512 U.S. 339, 348 (1994). Because the federal courts of appeal and the states that are parties to the IAD are interpreting the IAD in ways that defeat its stated purposes, the result of which is the serious consequence of the dismissal of criminal charges against possibly guilty violent offenders, this Court should grant certiorari to provide a nationally uniform interpretation of the IAD.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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SUPREME COURT OF ALABAMA

OCTOBER TERM, 1999-2000

1971759

Ex parte Michael Herman Bozeman

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF CRIMINAL APPEALS

(In re: Michael Herman Bozeman a/k/a Sonny Bozeman

v.

State of Alabama)

(Covington Circuit Court, CC-97-16; Court of Criminal Appeals, CR-96-1611)

PER CURIAM.

Michael Herman Bozeman was convicted in the Covington Circuit Court for two counts of discharging a firearm into an occupied dwelling, two counts of discharging a firearm into an unoccupied vehicle, and one count of discharging a firearm into an unoccupied dwelling. Bozeman argued that the State tried him on these charges in violation of art. IV(e) – the "anti-shuttling"

provision – of the Interstate Agreement on Detainers ("IAD"). The trial court rejected Bozeman's argument, and denied his motion to dismiss. The Court of Criminal Appeals, on May 8, 1998, affirmed Bozeman's convictions, by an unpublished memorandum, holding that the State's technical violation of the IAD did not require the dismissal of the charges against Bozeman. *Bozeman v. State* (No. CR-96-1611), 738 So. 2d 934 (Ala. Crim. App. 1998) (table). On certiorari review, we reverse and remand.

Michael Herman Bozeman was arrested on June 15, 1995, on federal charges of intimidating a witness to a shooting incident that had occurred in Opp, Alabama. No other action was ever taken on these charges, but an incident report was filed with the Opp Police Department. On June 16, Bozeman was taken into federal custody on federal drug charges unrelated to the shooting incident. On November 3, Bozeman pleaded guilty to the federal drug charges and was sentenced by the United States District Court for the Middle District of Alabama. Meanwhile, in September 1995, the Grand Jury of Covington County had indicted Bozeman for possession of a controlled substance. On November 8, Bozeman was transferred from federal custody to Covington County to allow the State to pursue the possession charges (case CC-95-350). He was appointed counsel, was arraigned, and was then returned to federal custody. The possession charges (case CC-95-350) were nol-prossed in June 1996. In September 1996, Bozeman was indicted on state charges (case CC-97-16) stemming from the June 1995 shooting incident.

Following the indictment on the state shooting charges, Covington County placed a detainer on Bozeman, and he was again transferred from federal custody to Covington County on January 23, 1997. Counsel was appointed for Bozeman, and he was arraigned on the state shooting charges.[1] On January 24, Bozeman was transferred back to federal custody; that transfer prompted his counsel to file a motion to dismiss, claiming that the transfer violated the IAD.[2] In February, the shooting case (case CC-97-16) went to trial in the Covington Circuit Court, and a jury returned a guilty verdict on each of the five counts relating to the shooting. The trial court held a posttrial hearing to consider Bozeman's motion to dismiss the indictment pursuant to the

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[1] The trial court granted Bozeman's newly appointed counsel leave to raise any issues that would normally be addressed before an arraignment.

[2] The IAD, also known as the Uniform Mandatory Disposition of Detainers Act ("UMDDA"), is codified in Ala. Code 1975, § 15-9-81. The IAD is a contract among the states, the United States, and the District of Columbia.

> "The [IAD] attempts to remedy the disadvantages and hardships imposed upon prisoners attendant to the use of detainers and to eliminate potential abuses of the detainer system. . . . The [IAD] provides the prisoner with a method of clearing detainers lodged against him. It further provides cooperative proceedings for temporary transfers of prisoners for purposes of trial on outstanding charges among the participating jurisdictions to aid such disposition."

Gillard v. State, 486 So. 2d 1323, 1325 (Ala. Crim. App. 1986) (citing *United States v. Dixon*, 592 F.2d 329 (6th Cir.), cert. denied, 441 U.S. 951 (1979)).

IAD. On May 16, the trial court denied Bozeman's motion to dismiss, and on May 21 it denied his subsequent motion for a new trial. Bozeman appealed, and the Court of Criminal Appeals affirmed. This Court granted Bozeman's petition for the writ of certiorari to consider whether a technical violation of the IAD warranted the dismissal of the state shooting charges against Bozeman (case CC-97-16).[3]

Bozeman argues that under the plain meaning of the IAD, his transfers in November 1995 and January 1997 both required the dismissal of the shooting charges with prejudice. Article IV of the IAD, which was codified at § 15-9-81, provides:

> "(a) The appropriate officer of the jurisdiction in which an untried indictment, information or complaint is pending shall be entitled to have a prisoner against whom he has lodged a detainer and who is serving a term of imprisonment in any party state made available in accordance with article V(a) hereof upon presentation of a written request for temporary custody or availability to the appropriate authorities of the state in which the prisoner is incarcerated. . . .
>
> ". . . .
>
> "(e) If trial is not had on any indictment, information or complaint contemplated hereby prior to the prisoner's being returned to the original place of imprisonment pursuant to article V(e) hereof, such indictment, information or

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[3] As we discuss later, a "technical violation" of the IAD is one that does not defeat a legitimate interest of the prisoner, for example, an interest in receiving rehabilitation services.

> complaint shall not be of any further force or effect, and the court shall enter an order dismissing the same with prejudice."[4]

Bozeman argues that because he was transferred from federal custody to state custody to allow the State to pursue the possession case (case CC-95-350) and back to federal custody in November 1995, without being prosecuted in the shooting case (case CC-97-16), the charges in that case should be dismissed with prejudice on the basis that a prosecution on those charges would violate the IAD. However, at the time of Bozeman's November 1995 transfer, nothing more than an incident report had been filed with respect to the shooting charges. Thus, because no indictment, information,[5] or complaint had been filed with respect to the shooting case at the time of the November 1995 transfer, under the IAD the November 1995 transfer does not require the dismissal of the shooting charges.

Bozeman also argues that because he was transferred back to federal custody after his January 1997 transfer to state custody for arraignment in the shooting case (case CC-97-16) without being prosecuted in that case, the charges stated in the shooting case should have been dismissed with prejudice as violating the IAD. The Court

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[4] Article V(e) requires that the prisoner be returned to the sending state "[a]t the earliest practicable time consonant with the purposes of [the IAD]."

[5] "An information is a written statement charging the defendant or defendants named therein with the commission of an indictable offense, made on oath, signed, and presented to the court by the district attorney, pursuant to Rule 2.2(e), without action by the grand jury." Rule 13.1(b), Ala. R. Crim. P.

of Criminal Appeals affirmed the trial court's refusal to dismiss, stating in its unpublished memorandum that, despite a technical violation of the IAD, the statute should not be interpreted so narrowly as to defeat its purpose.

The State does not dispute that a technical violation of the IAD occurred and does not argue that Bozeman's recitation of this Court's rules of statutory construction is incorrect. Instead, the State asserts that the IAD is federal law that is subject to federal construction. The State cites an opinion of the Supreme Court of the United States stating that "[t]he [IAD] is a congressionally sanctioned interstate compact within the Compact Clause, U.S. Const., Art. I, § 10, cl. 3, and thus is a federal law subject to federal construction." *Carchman v. Nash*, 473 U.S. 716, 719 (1985). Moreover, the Supreme Court has held that "because the [IAD] is an interstate compact approved by Congress . . . [it] is . . . a federal law subject to federal rather than state construction." *Cuyler v. Adams*, 449 U.S. 433, 438 (1981). *See, also, New York v. Hill*, ___ U.S. ___, 120 S. Ct. 659 (2000). If the United States Supreme Court had already ruled on this issue, or if all federal circuits were in agreement on this issue, we would accept the State's view. However, because the United States Supreme Court has not ruled on how the detainer statute should be interpreted, and in light of the split of authority among the courts of appeals for the various federal circuits, this Court is free to select the interpretation it considers most sound. See *Hagler v. Ford Motor Credit Co.*, 381 So. 2d 80, 82 (Ala. Civ. App. 1980) (where federal courts are split on an issue and the United States Supreme Court is silent on

that issue, state courts may select the view they consider the more logical one).

The conflict between the circuits was recognized by Justice White in his dissent from the order denying certiorari review in *Taylor v. United States*, 504 U.S. 991 (1992). In a plea to the Court to settle this dispute among the circuits, Justice White stated:

> "The Courts of Appeals are divided as to the propriety of dismissal when technical violations of the IAD occur. Some courts take the First Circuit's view that such violations do not merit dismissal, see, *e.g.*, *United States v. Roy*, 830 F.2d 628, 636 (CA 7 1987), cert. denied, 484 U.S. 1068 (1988); *United States v. Roy*, 771 F.2d 54, 60 (CA 2 1985), cert. denied, 475 U.S. 1110 (1986); *Sassoon v. Stynchombe*, 654 F.2d 371, 374-375 (CA 5 Unit B. Aug. 1981); but others do not, see, *e.g.*, *United States v. Thompson*, 562 F.2d 232, 234 (CA 3 1977) (en banc), cert. denied, 436 U.S. 949 (1978); *United States v. Schrum*, 638 F.2d 214 (CA 10 1981), aff'g 504 F. Supp. 23 ([D.] Kan. 1980)."

504 U.S. at 991.

We find persuasive the rationale set forth by the United States District Court for the Eastern District of Pennsylvania in *United States v. Sorrell*, 413 F. Supp. 138 (E.D. Pa. 1976), *aff'd*, 562 F.2d 227 (3d Cir. 1977), *cert. denied*, 436 U.S. 949 (1978). The district court, interpreting the same provision of the IAD, stated:

> "Admittedly, there may be minimal interruption of the rehabilitative process by a one day trip from Graterford and return. However, Congress was not dealing with an individual situation, but rather with an agreement of national scope.

> Suppose the defendant had been imprisoned in Erie, and not Graterford. The interruption there would be far more serious than here. If the defendant were confined on a state charge in Amarillo, Texas and had to be transferred for an indictment pending in Brownsville, Texas, a distance of approximately 700 miles, the disruption there would be far from minimal and could seriously interfere with one of the purposes of the Agreement. Again, *Congress could have written limitations into the Agreement. Again, it did not. And again, it is not for us to legislate.*"

413 F. Supp. at 141. (Emphasis added.) Likewise, the Alabama Legislature could have stepped beyond the confines of the text of the compact and included limitations in the statute expressly allowing "technical" violations to occur. However, it, like Congress, did not do so. This Court will not interject its interpretation of what the Legislature should have done.

The IAD is not ambiguous. It would require a tortured reading of the statute for us to conclude, as the State suggests, that a brief violation of the IAD can be ignored. Our conclusion in this regard is consistent with the purpose of the Act to protect a prisoner's constitutional right to a fair and speedy trial. We recognize that some federal courts have ignored the plain meaning of the IAD,[6] but, for the reasons cited above, we are under no obligation to follow the interpretation applied by those courts.

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[6] See, e.g., *Sassoon v. Stynchombe*, 654 F.2d 371 (5th Cir. 1981).

Bozeman argues correctly that the Court of Criminal Appeals' decision violated a fundamental rule of statutory construction as stated by this Court in *IMED Corp. v. Systems Engineering Associates Corp.*, 602 So. 2d 344 (Ala. 1992):

> "The fundamental rule of statutory construction is to ascertain and give effect to the intent of the legislature in enacting the statute. Words used in a statute must be given their natural, plain, ordinary, and commonly understood meaning, and where plain language is used a court is bound to interpret that language to mean exactly what it says. If the language of the statute is unambiguous, then there is no room for judicial construction and the clearly expressed intent of the legislature must be given effect."

Id. at 346 (citing *Tuscaloosa County Comm'n v. Deputy Sheriffs' Ass'n of Tuscaloosa County*, 589 So. 2d 687 (Ala. 1991)).

Bozeman was indicted on the state shooting charges on September 20, 1996; therefore an "untried indictment" was pending against Bozeman when he was returned to state authorities on January 15, 1997. He was returned to federal authorities without being tried by the State for the offenses of which he was subsequently convicted. Therefore, in accordance with the plain language of § 15-9-81 (art. IV(e) of the IAD),[7] the shooting charges against

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[7] "If trial is not had on any indictment . . . prior to the prisoner's being returned to the original place of imprisonment pursuant to Article V(e) hereof, such indictment . . . shall not be of any further force or effect, and the court shall enter an order

Bozeman should have been dismissed with prejudice. The trial court erred by denying Bozeman's motion to dismiss, and the Court of Criminal Appeals erred by affirming his convictions. The judgment of the Court of Criminal Appeals is reversed and the case is remanded.

REVERSED AND REMANDED.

Houston, Cook, Lyons, Johnstone, and England, JJ., concur.

Hooper, C.J., and Maddox and See, JJ., dissent.

Brown, J., recuses herself.*

*Justice Brown was a member of the Court of Criminal Appeals when that court considered this case.

SEE, Justice (dissenting).

I dissent from the reversal of the judgment of the Court of Criminal Appeals that affirmed Bozeman's convictions. I do not believe the State's technical violation of the IAD required the dismissal of the charges against Bozeman.

The Supreme Court of the United States has stated that "[t]he [IAD] is a congressionally sanctioned interstate compact within the Compact Clause, U.S. Const., Art. I, § 10, cl. 3, and thus is a federal law subject to federal construction." *Carchman v. Nash*, 473 U.S. 716, 719 (1985); see *Cuyler v. Adams*, 449 U.S. 433, 438 (1981) ("[B]ecause the [IAD] is an interstate compact approved by Congress . . . [it] is . . . a federal law subject to federal

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dismissing the same with prejudice." Ala. Code 1975, § 15-9-81 (Art. IV(e) if [sic] the IAD).

rather than state construction."); *Reed v. Farley*, 512 U.S. 339, 347 (1994) (recognizing that " 'congressional consent transforms an interstate compact . . . into a law of the United States' " (quoting *Cuyler v. Adams*, 449 U.S. at 438)). Thus, this Court is bound to follow federal precedent interpreting the IAD.

In *Sassoon v. Stynchombe*, 654 F.2d 371 (5th Cir. 1981),[8] the former Fifth Circuit considered whether a technical violation of Article IV(e) of the IAD required habeas corpus relief from the federal prisoner's conviction of state charges in Georgia. The federal prisoner was transferred to a state jail for five days, was arraigned on state charges, and was returned to the federal prison, without Georgia's having resolved the pending charges against him. He was later transferred back to state facilities, was tried, and was convicted of the state charges. The former Fifth Circuit recognized that Article IV(e) of the IAD had in fact been violated when the prisoner was transferred back to the federal prison without a resolution of the pending state charges, but it stated that the prisoner's "release [was] not justified where no 'legitimate interest' of the prisoner [was] defeated by the violation." *Id.* at 374. The court noted that " 'a primary purpose of the [IAD] is to protect prisoners against whom detainers are

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[8] *Sassoon* was decided on August 28, 1981. See 654 F.2d 371. In *Bonner v. City of Prichard*, 661 F.2d 1206, 1207 (11th Cir. 1981), the United States Court of Appeals for the Eleventh Circuit held that "the decisions of the United States Court of Appeals for the Fifth Circuit . . . as that court existed on September 30, 1981, handed down by that court prior to the close of business on that date, shall be binding as precedent in the Eleventh Circuit." Thus, *Sassoon* is binding precedent in this case.

outstanding[,]' . . . [and that] [n]o protection is necessary where no injury is threatened." *Sassoon*, 654 F.2d at 374 (quoting *Cuyler*, 449 U.S. at 449). The court denied the writ of habeas corpus, stating:

> " 'This court declines to apply [Article IV(e) of the IAD] mechanically contrary to the stated purposes of the [IAD] because such an application would be based upon a construction of the [IAD] against, rather than in behalf of, the legitimate interest of Sassoon in receiving rehabilitative education while in federal custody. On the facts of the present case, Clayton County's keeping Sassoon for trial, rather than returning him immediately after arraignment, would have interfered with Sassoon's legitimate interest in participating in the program of rehabilitation in which he was enrolled. A brief removal of a prisoner to the receiving jurisdiction and his prompt return to the sending jurisdiction after arraignment and prior to trial [are] consonant with the intention of the [IAD].' "

Id. at 375 (quoting *State v. Sassoon*, 240 Ga. 745, 749, 242 S.E.2d 121, 123 (1978)).

Bozeman was transferred in January 1997 from a federal penitentiary to state custody for one day. He was arraigned on the state shooting charges (case CC-97-16) and was returned to the federal penitentiary until his trial. Although Bozeman asserts that no evidence in the record indicates that his transfer back to the federal penitentiary enabled him to participate in any rehabilitation program, the record shows that he acknowledged the existence of such rehabilitation before the trial court denied his motion to dismiss. *Renewal of Defendant's*

Motion to Dismiss at 2. Bozeman does not argue on appeal that he was prejudiced by the transfer back to federal custody before his trial.[9] Accordingly, because Bozeman was not prejudiced by the State's technical violation of the IAD and because the violation permitted Bozeman to participate in federal rehabilitation programs, "no 'legitimate interest' of [Bozeman] [was] defeated by the violation [of Article IV(e) of the IAD]." *Sassoon*, 654 F.2d at 374. Therefore, based on the reasoning of the former Fifth Circuit in *Sassoon*, 654 F.2d 371, I conclude that the Court of Criminal Appeals properly affirmed the trial court's denial of Bozeman's motion to dismiss.[10]

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[9] After Bozeman's motion to dismiss was denied, he did assert in a motion to the trial court that "the State's violation of the [IAD] prevented [him] from having adequate opportunity to consult with his Court-appointed attorney prior to the trial of [his] case." *Motion for Judgment Notwithstanding the Verdict or in the Alternative for New Trial* at 1. However, the record contains no evidence to support this assertion.

[10] This conclusion is in accord with a majority of federal circuits that have addressed this issue. See *United States v. Taylor*, 173 F.3d 538, 541-42 (6th Cir. 1999) ("Numerous circuit courts have held that such quick, temporary transfers do not violate the IAD. See *Taylor v. United States*, 504 U.S. 991, 112 S.Ct. 2982, 119 L.Ed.2d 599 (1992) (White, J., dissenting from denial of certiorari) (listing cases from [the] First, Second, Fifth (Unit B 1981), Seventh, and Ninth Circuits)."); *United States v. Daniels*, 3 F.3d 25, 27 (1st Cir. 1993) ("[W]e have held – as have several other circuits – that a brief interruption in state prison confinement for purposes of arraignment, where the prisoner is returned to state custody the same day, does not violate the IAD.") (listing cases from the First, Second, Seventh, Eighth, and Ninth Circuits).

Despite the State's technical violation of Article IV(e) of the IAD, federal interpretation of the IAD, which this Court is bound to follow, dictates that where the violation does not defeat a legitimate interest of the prisoner and where the violation permits the prisoner to participate in a rehabilitation program, the IAD does not require the dismissal of the charges against the prisoner. Accordingly, the trial court properly denied Bozeman's motion to dismiss.

HOOPER, C.J., concurs.

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Presiding Judge
H. WARD McMILLAN
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Judges

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MEMORANDUM

CR-96-1611 Covington Circuit Court No. 97-16

Michael Herman Bozeman aka Sonny Bozeman v. State

Affirmed by memorandum. Michael Herman Bozeman has challenged on direct appeal his convictions in the Circuit Court of Covington County for two counts of discharging a firearm into an occupied dwelling, two counts of discharging a firearm into an unoccupied vehicle, and one count of discharging a firearm into an unoccupied dwelling. The charges are contained in circuit court case number CC-97-16. Bozeman contends that the State of Alabama obtained these convictions in violation of Article IV(e) – the "anti-shuffling" provision – of the Uniform Mandatory Disposition of Detainers Act,[1] (UMDDA). That article provides:

> "If trial is not had on any indictment, information, or complaint contemplated hereby prior to the prisoner's being returned to the original

[1] Sections 15-9-80 through 15-9-88, Ala.Code 1975.

> place of imprisonment pursuant to Article V(e) hereof, such indictment, information, or complaint shall not be of any further force or effect, and the court shall enter an order dismissing the same with prejudice."

§ 15-9-81, Art, IV(e), Ala.Code 1975. Concerning case CC-97-16, Bozeman contends that the State of Alabama violated Article IV(e) on two occasions. First, when the State obtained temporary custody of him from federal authorities to pursue charges in state case CC-95-350 and then returned him to federal custody without pursuing and completing case CC-97-16. Bozeman contends that the State of Alabama violated Article IV(e) a second time when it again obtained temporary custody over him from federal authorities for arraignment in case CC-97-17 and again returned him to federal custody prior to completing that case. Therefore, according to Bozeman, either reason alleged above requires that case CC-96-17 be dismissed with prejudice due to the violation of Article IV(e).

Bozeman has raised two issues on appeal challenging his convictions after a violation of Article IV of the UMDDA.

I.

Bozeman contends that the charges giving rise to the detainer filed in case CC-97-16 were "charges outstanding against a prisoner," § 15-9-81, Article I, UMDDA, when in November 1995, he was first transferred from federal custody to state custody regarding case CC-95-350. Therefore, according to Bozeman, he should have been put to trial on CC-97-16 before his return to federal authority

pursuant to the mandatory procedure stated in Article IV of the UMDDA. Bozeman contends that the charges contained in CC-97-16 are due to be dismissed with prejudice because he was not tried in that case before his return to federal custody. We find no merit to this argument because at the time of the November 1995 transfer in case CC-95-350, Bozeman had not been "charged" with any crime that later constituted case CC-97-16.

The District Attorney testified that only an incident report concerning the crimes in case CC-97-16 had been filed before Bozeman's transfer in CC-95-350. According [sic] the District Attorney, the Opp Police Department "had just forgotten about [CC-97-16] in light of the federal charges." R. 207. After being contacted by a victim who wanted the case pursued, the district attorney's office presented the case to the September 1996 grand jury. It is not sufficient that the authorities knew that an arrest was imminent or that an indictment would possibly be returned on the conduct underlying CC-97-16. This court in *Morrow v. State*, 675 So. 2d 89, 90 (Ala.Cr.App. 1995) held that "Article I clearly states that it pertains to 'untried indictments.' " (emphasis added).

II.

Bozeman contends that his return to federal custody after his January 1997 transfer to state custody for arraignment in case CC-97-16 was a clear violation of the UMDDA. On October 10, 1996, the District Attorney for Covington County mailed a letter to federal authorities at the Atlanta, Georgia federal prison where Bozeman was an inmate. This letter requested that a detainer be placed

on Bozeman for the outstanding charges contained in case CC-97-16. C.R. 180, R. 212. This letter also requested that Bozeman be made available for his upcoming arraignment on these charges and requested all necessary forms be mailed to the District Attorney for completion and return [sic] to the proper federal authorities in sufficient time before arraignment for the State to obtain Bozeman. The federal authorities in Atlanta responded stating that a detainer had been filed on Bozeman pursuant to the District Attorney's October 29, 1996 request. The record contains a notice to Bozeman of untried indictments and right to request disposition of the charges in case CC-97-17 [sic] pursuant to Article III of the UMDDA. Bozeman acknowledged receipt of this notice on November 4, 1996. C.R. 75.

After being advised by federal authorities in Atlanta that a detainer had been filed on Bozeman, the District Attorney was notified that Bozeman had been transferred to a federal prison in Marianna, Florida. On January 8, 1997 the District Attorney sent a letter and temporary custody form to federal prison authorities in Marianna, Florida. The letter and the form stated that Bozeman was needed for arraignment and appointment of counsel in case CC-97-16 and stated that Bozeman would be picked up on January 15 and returned to federal authorities on January 16, 1997. C.R. 179, 181. After arraignment and appointment of counsel in case CC-97-16 Bozeman was returned to federal authorities. He was returned to State authorities in February 1997 to stand trial on the charges contained in CC-97-16. Therefore, according to Bozeman, case CC-97-16 should be dismissed because these charges

which were pending against him in the receiving jurisdiction (the State of Alabama) were not tried before his return to "the original place of imprisonment" as provided in Article IV(e) of the UMDDA.

Technically, Article IV(e) creates no exception to the requirement that a jurisdiction that acquires a prisoner under the UMDDA should try that prisoner on pending indictments before returning that prisoner to his original place of imprisonment. See, Leslie W. Abramson, *The Interstate Agreement on Detainers: Narrowing its Availability and Application*, 21 New England Journal on Criminal and Civil Confinement 1, 38 (1995). However, such a rigid interpretation of Article IV(e) serves no purpose in conforming with the intent nor spirit of the UMDDA. Article I of the UMDDA outlines the purposes of the agreement as follows.

> "The party states find that charges outstanding against a prisoner, detainers based on untried indictments, informations or complaints and difficulties in securing speedy trial of persons already incarcerated in other jurisdictions, produce uncertainties which obstruct programs of prisoner treatment and rehabilitation. Accordingly, it is the policy of the party states and the purpose of this agreement to encourage the expeditious and orderly disposition of such charges and determination of the proper status of any and all detainers based on untried indictments, informations or complaints. The party states also find that proceedings with reference to such charges and detainers, when emanating from another jurisdiction, cannot properly be

had in the absence of cooperative procedures. It is the further purpose of this agreement to provide such cooperative procedures."

§ 15-9-81, Ala.Code 1975.

One commentator elaborated on the purposes of the UMDDA as follows.

"The Interstate Agreement on Detainers has two purposes. In addition to the administrative goal of creating a more efficient and uniform system of interjurisdictional rendition, the Agreement seeks to alleviate the abuses often suffered by prisoners against whom detainers were lodged. It represents a statutory grant of rights not fully protected by the due process and speedy trial provisions of the Constitution.

"Prior to the Agreement's development, a prisoner had neither the means to learn of the lodging of a detainer nor the concomitant right to effect the speedy disposition of the out-of-state charges underlying the detainer. The consequences of this impotence, critics observed, were both serious and indefensible. When a state informed prison officials of the possibility of a future demand for the rendition of a prisoner, his status within the prison system was often profoundly affected. Such a prisoner might be treated as an escape risk, or be denied trusty status and other significant institutional privileges. The mere awareness that a detainer had been lodged could have a 'corrosive' effect on a prisoner's attitude and diminish the likelihood of his taking advantage of whatever rehabilitative opportunities existed at the institution in which he was incarcerated. A filed detainer could affect the length as well as the terms of

> confinement by limiting the prospects for executive clemency and even reducing the likelihood of parole. Absent the power to expedite the prosecution of out-of-state charges, the prisoner often lost the possibility that the second sentence, if imposed at all, might run concurrently with the first.
>
> "The authors of the IAD sought to eliminate the needlessly punitive, arbitrary, and sometimes vindictive elements of the prior detainer system by affording the prisoner the right to demand and receive a speedy trial on any charges underlying a filed detainer. Like those of the Speedy Trial Act, the concrete guarantees of the IAD go well beyond the rather amorphous and easily defeated constitutional right to a speedy trial as it has been construed by the federal courts."

Federal Habeas Corpus Review of Nonconstitutional Errors: The Cognizability of Violations of the Interstate Agreement on Detainers, Columbia Law Review, Vol. 83, No. 4, 975, 977-980 (May 1983).

We acknowledge that a split exists among the federal circuits on whether a one-day or more transfer between a sending and receiving jurisdiction without resolution of the receiving jurisdictions pending charges violate [sic] the UMDDA. However, because paragraph 1 of Article IX of the UMDDA states that "[t]his agreement shall be liberally construed so as to effectuate its purposes," we choose to follow the rationale from those circuits which hold that a brief custody transfer between jurisdictions does not always require a dismissal of the charge with prejudice. We so hold because these transfers do not interfere with the purpose of the act. Moreover, there was

no assertion, until appeal, that Bozeman suffered any prejudice from the transfers.[2]

As persuasive authority for our position we cite to the following cases. In *State v. Sassoon*, 240 Ga. 745, 242 S.E.2d 121 (1978) Sasson relied alone upon the explicit language of the Georgia Statute enacting the Interstate Agreement on Detainers Act[3] stating: "if trial is not had on any indictment, information or complaint contemplated hereby prior to the prisoner's being returned to the original place of imprisonment pursuant to Article V(e) hereof [§ 77-506b] such indictment, information or complaint shall not be of any further force or effect, and the court shall enter an order dismissing the same with prejudice." *Sassoon*, 240 Ga. at 748, 242 S.E.2d at 123. This language from the Georgia statute is identical to Alabama's statute. The Supreme Court of Georgia concluded the following.

> "A brief removal of a prisoner to the receiving jurisdiction and his prompt return to the sending jurisdiction after arraignment and prior to trial is consonant with the intention of the Interstate Agreement on Detainers."

State v. Sassoon, 240 Ga. at 749, 242 S.E.2d at 123.

---

[2] On appeal Bozeman made a conclusory assertion that his transfers interfered with his ability to aid in his defense. We acknowledge that jurisdictions differ on the necessity of requiring proof of prejudice under Article IV(e). We do not have to resolve this at this time because Art. IV(e) was not violated in this case.

[3] Ga.Code Ann. § 77-505b(e).

Ultimately Sassoon's case reached the Fifth Circuit Court of Appeals where the federal court quoted the Georgia Supreme Court's opinions stating:

> " 'This court declines to apply (Article IV(e)) mechanically contrary to the stated purposes of the Interstate Agreement on Detainers because such an application would be based upon a construction of the Agreement against, rather than in behalf of, the legitimate interest of Sassoon in receiving rehabilitative education while in federal custody. On the facts of the present case, Clayton County's [Ga.] keeping Sassoon for trial, rather than returning him immediately after arraignment, would have interfered with Sassoon's legitimate interest in participating in the program of rehabilitation in which he was enrolled. A brief removal of a prisoner to the receiving jurisdiction and his prompt return to the sending jurisdiction after arraignment and prior to trial is consonant with the intention of the Interstate Agreement on Detainers. . . . '
>
> "240 Ga. at 749, 242 S.E.2d 121."

Sassoon v. Stynchombe, 654 F.2d 371, 375 (5th Cir. 1981).

Likewise in *United States v. Taylor*, 947 F.2d 1002 (1st Cir. 1991) the defendant filed a pro se motion to dismiss the federal indictment because the anti-shuffling provision of the interstate agreement on detainers had been violated when he was taken from Massachusetts custody in its state prison to the District Court for the District of Massachusetts on a writ of habeas corpus ad prosequendum for arraignment for an unrelated crime and returned

to state custody the same day.[4] The *Taylor* court ruled as follows.

> "Strictly, in literal accordance with the statutory language, defendant was correct. Our question is whether common sense rejects that literal application. We so hold. The test is the underlying purpose of the Act. *United States v. Mauro*, 436 U.S. 340, 349, 98 S.Ct. 1834, 1841-42, 56 L.Ed.2d 329 (1978).
>
> " . . . [S]o brief an interruption was no threat to his rehabilitation, the main purpose of the Act, and that there could be advantages to a prisoner in not delaying a federal arraignment. Inherent in our decision, . . . [is] that the prisoner's return the same day was to the same institution from which he had been sent. We take this circumstance to be essential to our ruling.

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[4] We have discerned from the record in Bozeman's case that confusion may have existed between a writ of habeas corpus ad prosequendum and lodging a detainer. A writ of habeas corpus ad prosequendum is not a detainer for purposes of the UMDDA.

> "A 'detainer' is an informal ' " 'notification filed with the institution in which a prisoner is serving a sentence, advising that he is wanted to face pending criminal charges in another jurisdiction. . . . A writ of habeas corpus ad prosequendum, on the other hand, 'is an order by a court directing authorities to produce a prisoner to face criminal charges' and is not considered a detainer, regardless of whether it is issued by a state or by a federal court."

People v. Wilden, 197 Mich.App. 533, 538, 496 N.W.2d 801, 804 (1992). If confusion existed, it has no bearing on the resolution of this particular case.

> " . . . What we rely on is the single day interruption of the state confinement, and the manifest lack of injury."

United States v. Taylor, 947 F.2d at 1003, 1004; *United States v. Danials*, 3 F.3d 25, 27 (1st Cir. 1993) ("Strictly speaking, the argument is not without merit. In this circuit, however, we have firmly held that "common sense rejects that literal application."); *United States v. Johnson*, 953 F.2d 1167, 1171 (9th Cir. 1992) (Johnson claimed his indictment should be dismissed because the United States violated the anti-shuttling provision of the Interstate Agreement on Detainers Act by moving him from state to federal custody and back on *five* occasions before he was tried on the federal indictment. The *Johnson* court held: "[I]n the absence of any evidence that the one-day transfers interfered with [the defendant's] participation in any rehabilitative program, or that he was denied, threatened with the denial of, or feared losing any privileges because of the pending federal charges. The transfers involved in this case appear to be wholly consistent with the goal of the Interstate Detainers Act to expedite the prosecution of federal charges without interfering with the state's rehabilitative programs."); *United States v. Chico*, 558 F.2d 1047, 1049 (2nd Cir. 1977) (" . . . Article IV(e) of the Act does not apply to a case where a prisoner is removed from the prison of a state for a few hours to be arraigned, plead and be sentenced in the federal court without ever being held at any place of imprisonment other than that of the sending state and without interruption of his rehabilitation there."); *Baxter v. United States*, 966 F.2d 387, 389 (8th Cir. 1992) (removal from state custody for few hours for arraignment and plea does not violate IAD); *United*

States v. Roy, 830 F.2d 628, 636 (7th Cir. 1987) (overnight removal did not violate IAD).

Based on the record in this case, we find that Bozeman's brief transfer in January 1997 for arraignment in case CC-97-16 and return to federal custody the following day did not violate Article IV(e) of the UMDDA. The trial court correctly denied his motion to dismiss.

All the Judges Concur.

IN THE CIRCUIT COURT OF COVINGTON COUNTY, ALABAMA

STATE OF ALABAMA,	*	
PLAINTIFF,	*	
VS.	*	**CASE NO.**
MICHAEL HERMAN BOZEMAN,	*	**CC-97-16**
DEFENDANT.	*	

ORDER

(Filed May 16, 1997)

I have now heard defendant's claim that this prosecution should be dismissed on account of alleged violation of the Interstate Agreement on Detainers Act (hereinafter "IAD"), and therefore proceed to rule upon that particular issue, as explained below.

At the IAD hearing defense counsel set forth his position as follows: "Our claim is not based on violation of Article III [of the IAD]. Rather, our contention is that the District Attorney has violated Article IV." That being the contention before me, I limit my inquiry as to whether or not there has been an Article IV violation mandating dismissal of this case.

The facts show that defendant was transported from federal authorities to Covington County, Alabama, twice before trial. The first time, he was both brought here and returned on or about November 8, 1995, in connection with another charge. There were no formal proceedings pending related to CC-97-16 at that juncture.

After indictment in CC-97-16 defendant was brought to Covington County a second time. He arrived January 23, 1997, whereupon he was both arraigned and returned to the federal prison at Marianna, Florida, the next day. Thus, defendant was kept about 24 hours before being sent back.

It seems to me that defendant was brought to Covington County on both the above mentioned occasions to attend to short pre-trial matters, not anticipated to require his extended presence. It made much sense to bring him into the county briefly to see to those matters, and thereupon return him to the surroundings to which he was accustomed. That course appears to have been conservative of *defendant's* interest in maintaining any course of rehabilitation available to him in federal prison. He certainly would not receive much rehabilitation in a county jail.

Furthermore, my experience indicates that when a federal prisoner is needed for a minor proceeding in state court, it is often difficult to acquire his person indefinitely without encountering substantial reluctance from federal authorities. Also, many prison inmates don't care to stay in our county jail for two or three months pending trial.

To paraphrase another court, at the hearing of this matter there was a failure of proof that the short transfers to Covington County interfered with defendant's participation in any rehabilitative program, or that he was denied, threatened with the denial of, or feared losing any privileges because of this state charge, and no dismissal is appropriate. The transfers involved in this case

appear to be wholly consistent with the goal of the IAD to expedite the prosecution of state charges without interfering with any rehabilitative programs of the federal government. *United States v. Johnson*, 953 F.2d 1167 (9th Cir. 1992). *See also United States v. Roy*, 830 F.2d 628 (7th Cir. 1987) and *State v. Sassoon*, 242 S.E.2d 121 (Ga. 1978).

Gillard v. State, 486 So.2d 1323 (Ala. Crim. App. 1986) and *State v. Hill*, 638 So.2d 1376 (Ala. Crim. App. 1993) are both easily distinguishable from the facts before me. In both those cases the prisoner was held by the receiving state an inordinate amount of time before return to the sending state. Attempts that followed to reassert custody by the receiving state were thus clearly in contravention of the inmates' interest.

Defendant, however, also asserts that he has not been returned to federal authorities since trial at the earliest practicable time consonant with the purposes of the IAD. On the contrary, in view of defendant's tendency to claim that every transfer to federal authorities violates the IAD, it has not been practicable to return him before this ruling. Further, the ruling is made at the first opportunity the work load of the undersigned would permit. Defendant's contention is meritless.

In consequence of all the foregoing the request to have this case dismissed under the IAD is DENIED. Judgment and sentencing are now rescheduled for the 21st day of May, 1997, at 4:30 o'clock p.m.

DONE and ORDERED this 16th day of May, 1997.

/s/ M. Ashley McKathan
M. ASHLEY McKATHAN
CIRCUIT JUDGE

IN THE SUPREME COURT OF ALABAMA
June 30, 2000

1971759

Ex parte Michael Herman Bozeman. PETITION FOR WRIT OF CERTIORARI TO THE COURT OF CRIMINAL APPEALS (In re: Michael Herman Bozeman aka Sonny Bozeman v. State) (Covington Cir.Ct.No.: CC-97-16) (Low'r.App.Ct.No.: 96-1611)

ORDER

IT IS ORDERED that the application for rehearing filed in the above cause on April 14, 2000, be, and the same is hereby, overruled. NO OPINION.

PER CURIAM – Houston, Cook, Lyons, Johnstone, and England, JJ., concur; Hooper, C.J., and Maddox and See, JJ., dissent; Brown, J., recuses herself.* (*Justice Brown was a member of the Court of Criminal Appeals when that court considered this case.)

COURT OF CRIMINAL APPEALS
STATE OF ALABAMA
JUDICIAL BUILDING, 300 DEXTER AVENUE
P.O. BOX 301555
MONTGOMERY, AL 36130-1555

FRANCIS ALLEN LONG, SR.
Presiding Judge
H. WARD McMILLAN
SUE BELL COBB
PAMELA W. BASCHAB
JAMES H. FRY
Judges

Lane W. Mann
Clerk
Wanda K. Ivey
Assistant Clerk
(334) 242-4590
FAX (334) 242-4689

Hon. Roger A. Powell, Circuit Clerk
Hon. Mark John Christensen, Attorney

RE: CR-96-1611
Michael Herman Bozeman v. State of Alabama
(Appeal from Covington Circuit Court: CC97-16)

Dear Sir or Madam:

You are hereby notified that on June 19th, 1998 the following action was taken in the above referenced cause by the Court of Criminal Appeals:

Application for rehearing overruled. 39(k) Motion Denied.

Lane W. Mann
Clerk
Court of Criminal Appeals

LWM/wki

CODE OF ALABAMA 1975

ARTICLE 3.

MANDATORY DISPOSITION OF DETAINERS.

§ 15-9-80. Short title.

This article may be cited as the Uniform Mandatory Disposition of Detainers Act. (Acts 1978, No. 590, p. 693, § 2.)

§ 15-9-81. Adoption and text of agreement on detainers.

The agreement on detainers is hereby enacted into law and entered into by the State of Alabama with any and all jurisdictions legally joining therein, in the form substantially as follows:

AGREEMENT ON DETAINERS

The contracting states solemnly agree that:

Article I.

The party states find that charges outstanding against a prisoner, detainers based on untried indictments, informations or complaints and difficulties in securing speedy trial of persons already incarcerated in other jurisdictions, produce uncertainties which obstruct programs of prisoner treatment and rehabilitation. Accordingly, it is the policy of the party states and the purpose of this

agreement to encourage the expeditious and orderly disposition of such charges and determination of the proper status of any and all detainers based on untried indictments, informations or complaints. The party states also find that proceedings with reference to such charges and detainers, when emanating from another jurisdiction, cannot properly be had in the absence of cooperative procedures. It is the further purpose of this agreement to provide such cooperative procedures.

Article II.

As used in this agreement:

(a) "State" shall mean a state of the United States; the United States of America; a territory or possession of the United States; the District of Columbia; the Commonwealth of Puerto Rico.

(b) "Sending state" shall mean a state in which a prisoner is incarcerated at the time that he initiates a request for final disposition pursuant to article III hereof or at the time that a request for custody or availability is initiated pursuant to article IV hereof.

(c) "Receiving state" shall mean the state in which trial is to be had on an indictment, information or complaint pursuant to article III or article IV hereof.

Article III.

(a) Whenever a person has entered upon a term of imprisonment in a penal or correctional institution of a party state, and whenever during the continuance of the term of imprisonment there is pending in any other party

state any untried indictment, information or complaint on the basis of which a detainer has been lodged against the prisoner, he shall be brought to trial within 180 days after he shall have caused to be delivered to the prosecuting officer and the appropriate court of the prosecuting officer's jurisdiction written notice of the place of his imprisonment and his request for a final disposition to be made of the indictment, information, or complaint; provided, that for good cause shown in open court, the prisoner or his counsel being present, the court having jurisdiction of the matter may grant any necessary or reasonable continuance. The request of the prisoner shall be accompanied by a certificate of the appropriate official having custody of the prisoner, stating the term of commitment under which the prisoner is being held, the time already served, the time remaining to be served on the sentence, the amount of good time earned, the time of parole eligibility of the prisoner and any decision of the state parole agency relating to the prisoner.

(b) The written notice and request for final disposition referred to in paragraph (a) hereof shall be given or sent by the prisoner to the warden, commissioner of corrections or other official having custody of him, who shall promptly forward it together with the certificate to the appropriate prosecuting official and court by registered or certified mail, return receipt requested.

(c) The warden, commissioner of corrections or other official having custody of the prisoner shall promptly inform him of the source and contents of any detainer lodged against him and shall also inform him of his right to make a request for final disposition of the

indictment, information or complaint on which the detainer is based.

(d) Any request for final disposition made by a prisoner pursuant to paragraph (a) hereof shall operate as a request for final disposition of all untried indictments, informations or complaints on the basis of which detainers have been lodged against the prisoner from the state to whose prosecuting official the request for final disposition is specifically directed. The warden, commissioner of corrections or other official having custody of the prisoner shall forthwith notify all appropriate prosecuting officers and courts in the several jurisdictions within the state to which the prisoner's request for final disposition is being sent of the proceeding being initiated by the prisoner. Any notification sent pursuant to this paragraph shall be accompanied by copies of the prisoner's written notice, request and the certificate. If trial is not had on any indictment, information or complaint contemplated hereby prior to the return of the prisoner to the original place of imprisonment, such indictment, information or complaint shall not be of any further force or effect, and the court shall enter an order dismissing the same with prejudice.

(e) Any request for final disposition made by a prisoner pursuant to paragraph (a) hereof shall also be deemed to be a waiver of extradition with respect to any charge or proceeding contemplated thereby or included therein by reason of paragraph (d) hereof, and a waiver of extradition to the receiving state to serve any sentence there imposed upon him, after completion of his term of imprisonment in the sending state. The request for final disposition shall also constitute a consent by the prisoner

to the production of his body in any court where his presence may be required in order to effectuate the purposes of this agreement and a further consent voluntarily to be returned to the original place of imprisonment in accordance with the provisions of this agreement. Nothing in this paragraph shall prevent the imposition of a concurrent sentence if otherwise permitted by law.

(f) Escape from custody by the prisoner subsequent to his execution of the request for final disposition referred to in paragraph (a) hereof shall void the request.

Article IV.

(a) The appropriate officer of the jurisdiction in which an untried indictment, information or complaint is pending shall be entitled to have a prisoner against whom he has lodged a detainer and who is serving a term of imprisonment in any party state made available in accordance with article V(a) hereof upon presentation of a written request for temporary custody or availability to the appropriate authorities of the state in which the prisoner is incarcerated; provided, that the court having jurisdiction of such indictment, information or complaint shall have duly approved, recorded and transmitted the request; and provided further, that there shall be a period of 30 days after receipt by the appropriate authorities before the request be honored, within which period the governor of the sending state may disapprove the request for temporary custody or availability, either upon his own motion or upon motion of the prisoner.

(b) Upon request of the officer's written request as provided in paragraph (a) hereof, the appropriate authorities having the prisoner in custody shall furnish the officer with a certificate stating the term of commitment under which the prisoner is being held, the time already served, the time remaining to be served on the sentence, the amount of good time earned, the time of parole eligibility of the prisoner and any decisions of the state parole agency relating to the prisoner. Said authorities simultaneously shall furnish all other officers and appropriate courts in the receiving state who have lodged detainers against the prisoner with similar certificates and with notices informing them of the request for custody or availability and of the reasons therefor.

(c) In respect of any proceeding made possible by this article, trial shall be commenced within 120 days of the arrival of the prisoner in the receiving state, but for good cause shown in open court, the prisoner or his counsel being present, the court having jurisdiction of the matter may grant any necessary or reasonable continuance.

(d) Nothing contained in this article shall be construed to deprive any prisoner of any right which he may have to contest the legality of his delivery as provided in paragraph (a) hereof, but such delivery may not be opposed or denied on the ground that the executive authority of the sending state has not affirmatively consented to or ordered such delivery.

(e) If trial is not had on any indictment, information or complaint contemplated hereby prior to the prisoner's being returned to the original place of imprisonment

pursuant to article V(e) hereof, such indictment, information or complaint shall not be of any further force or effect, and the court shall enter an order dismissing the same with prejudice.

Article V.

(a) In response to a request made under article III or article IV hereof, the appropriate authority in a sending state shall offer to deliver temporary custody of such prisoner to the appropriate authority in the state where such indictment, information or complaint is pending against such person in order that speedy and efficient prosecution may be had. If the request for final disposition is made by the prisoner, the offer of temporary custody shall accompany the written notice provided for in article III of this agreement. In the case of a federal prisoner, the appropriate authority in the receiving state shall be entitled to temporary custody as provided by this agreement or to the prisoner's presence in federal custody at the place of trial, whichever custodial arrangement may be approved by the custodian.

(b) The officer or other representative of a state accepting an offer of temporary custody shall present the following upon demand:

(1) Proper identification and evidence of his authority to act for the state into whose temporary custody this prisoner is to be given.

(2) A duly certified copy of the indictment, information or complaint on the basis of which the detainer has been lodged and on

the basis of which the request for temporary custody of the prisoner has been made.

(c) If the appropriate authority shall refuse or fail to accept temporary custody of said person, or in the event that an action on the indictment, information or complaint on the basis of which the detainer has been lodged is not brought to trial within the period provided in article III or article IV hereof, the appropriate court of the jurisdiction where the indictment, information or complaint has been pending shall enter an order dismissing the same with prejudice, and any detainer based thereon shall cease to be of any force or effect.

(d) The temporary custody referred to in this agreement shall be only for the purpose of permitting prosecution on the charge or charges contained in one or more untried indictments, informations or complaints which form the basis of the detainer or detainers or for prosecution on any other charge or charges arising out of the same transaction. Except for his attendance at court and while being transported to or from any place at which his presence may be required, the prisoner shall be held in a suitable jail or other facility regularly used for persons awaiting prosecution.

(e) At the earliest practicable time consonant with the purposes of this agreement, the prisoner shall be returned to the sending state.

(f) During the continuance of temporary custody or while the prisoner is otherwise being made available for trial as required by this agreement, time being served on the sentence shall continue to run, but good time shall be earned by the prisoner only if, and to the extent that, the

law and practice of the jurisdiction which imposed the sentence may allow.

(g) For all purposes other than that for which temporary custody as provided in this agreement is exercised, the prisoner shall be deemed to remain in the custody of and subject to the jurisdiction of the sending state, and any escape from temporary custody may be dealt with in the same manner as an escape from the original place of imprisonment or in any other manner permitted by law.

(h) From the time that a party state receives custody of a prisoner pursuant to this agreement until such prisoner is returned to the territory and custody of the sending state, the state in which the one or more untried indictments, informations or complaints are pending or in which trial is being had shall be responsible for the prisoner and shall also pay all costs of transporting, caring for, keeping and returning the prisoner. The provisions of this paragraph shall govern unless the states concerned shall have entered into a supplementary agreement providing for a different allocation of costs and responsibilities as between or among themselves. Nothing herein contained shall be construed to alter or affect any internal relationship among the departments, agencies and officers of and in the government of a party state, or between a party state and its subdivisions, as to the payment of costs, or responsibilities therefor.

Article VI.

(a) In determining the duration and expiration dates of the time periods provided in articles III and IV of

this agreement, the running of said time periods shall be tolled whenever and for as long as the prisoner is unable to stand trial, as determined by the court having jurisdiction of the matter.

(b) No provision of this agreement, and no remedy made available by this agreement shall apply to any person who is adjudged to be mentally ill.

Article VII.

Each state party to this agreement shall designate an officer who, acting jointly with like officers of other party states, shall promulgate rules and regulations to carry out more effectively the terms and provisions of this agreement, and who shall provide, within and without the state, information necessary to the effective operation of this agreement.

Article VIII.

This agreement shall enter into full force and effect as to a party state when such state has enacted the same into law. A state party to this agreement may withdraw herefrom by enacting a statute repealing the same. However, the withdrawal of any state shall not affect the status of any proceedings already initiated by inmates or by state officers at the time such withdrawal takes effect, nor shall it affect their rights in respect thereof.

Article IX.

1. This agreement shall be liberally construed so as to effectuate its purposes. The provisions of this agreement shall be severable and if any phrase, clause, sentence or provision of this agreement is declared to be contrary to the Constitution of any party state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this agreement and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this agreement shall be held contrary to the Constitution of any state party hereto, the agreement shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

2. The phrase "appropriate court," as used in the agreement on detainers, shall, with reference to the courts of this state, mean any court with criminal jurisdiction.

3. All courts, departments, agencies, officers and employees of this state and its political subdivisions are hereby directed to enforce the agreement on detainers and to cooperate with one another and with other party states in enforcing the agreement and effectuating its purposes.

4. Escape from custody while in another state pursuant to the agreement on detainers shall constitute an offense against the laws of this state to the same extent and degree as an escape from the institution in which the prisoner was confined immediately prior to having been sent to another state pursuant to the provisions of the

agreement on detainers, and shall be punishable in the same manner as an escape from said institution.

5. It shall be lawful and mandatory upon the warden or other official in charge of a penal or correctional institution in this state to give over the person of any inmate thereof whenever so required by the operation of the agreement on detainers.

6. The Governor is hereby authorized and empowered to designate an administrator who shall perform the duties and functions and exercise the powers conferred upon such person by article VII of the agreement on detainers.

7. In order to implement article IV(a) of the agreement on detainers, and in furtherance of its purposes, the appropriate authorities having custody of the prisoner shall, promptly upon receipt of the officer's written request, notify the prisoner and the governor in writing that a request for temporary custody has been made and such notification shall describe the source and contents of said request. The authorities having custody of the prisoner shall also advise him in writing of his rights to counsel, to make representations to the governor within 30 days and to contest the legality of his delivery. (Acts 1978, No. 590, p. 698, § 1.)

§ 15-9-82. Right of prisoner to final disposition of untried indictments, etc., pending against him; duty of official having custody of prisoners to inform prisoners of untried indictments, etc.; failure to notify prisoners of filing of detainers.

(a) Any person who is imprisoned in a penal or correctional institution of this state may request final disposition of any untried indictment, information or complaint pending against him in this state. The request shall be in writing addressed to the court in which the indictment, information or complaint is pending and to the district attorney charged with the duty of prosecuting it, and shall set forth the place of imprisonment.

(b) The warden or other like official having custody of prisoners shall promptly inform each prisoner in writing of the source and nature of any untried indictment, information or complaint against him of which the warden or other like official had knowledge or notice, and of his right to make a request for final disposition thereof.

(c) Failure of the warden or other like official to inform a prisoner, as required by this section, within one year after a detainer has been filed at the institution, shall entitle him to a final dismissal of the indictment, information or complaint with prejudice. (Acts 1978, No. 590, p. 693, § 3.)

§ 15-9-83. Action by official having custody of prisoner upon receipt of request for final determination.

The request shall be delivered to the warden or other like official having custody of the prisoner, who shall forthwith:

(1) Certify the term of commitment under which the prisoner is being held, the time already served on the sentence, the time remaining to be served, the good time earned, the time of parole eligibility of the prisoner and any decisions of the State Board of Pardons and Paroles relating to the prisoner; and

(2) Send by registered or certified mail, return receipt requested, one copy of the request and certificate to the court and one copy to the district attorney to whom it is addressed. (Acts 1978, No. 590, p. 693, § 4.)

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§ 15-9-84. Time within which indictment, etc., to be brought to trial; continuances; failure to bring indictment, etc., to trial within specified time.

Within 90 days after the receipt of the request and certificate by the court and district attorney or within such additional time as the court for good cause shown in open court may grant, the prisoner or his counsel being present, the indictment, information or complaint shall be brought to trial; but the parties may stipulate for a continuance or a continuance may be granted on notice to the

attorney of record and opportunity for him to be heard. If, after such a request, the indictment, information or complaint is not brought to trial within that period, no court of this state shall any longer have jurisdiction thereof, nor shall the untried indictment, information or complaint be of any further force or effect, and the court shall dismiss it with prejudice. (Acts 1978, No. 590, p. 693, § 5.)

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§ 15-9-85. Escape by prisoner after request filed.

Escape from custody by any prisoner subsequent to his execution of a request for final disposition of an untried indictment, information or complaint voids the request. (Acts 1978, No. 590, p. 693, § 6.)

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§ 15-9-86. Article inapplicable to mentally ill persons.

This article does not apply to any person adjudged to be mentally ill. (Acts 1978, No. 590, p. 693, § 7.)

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§ 15-9-87. Notice to prisoners of provisions of article.

The warden or other like official having custody of prisoners shall arrange for all prisoners to be informed in writing of the provisions of this article, and for a record

thereof to be placed in the prisoner's file. (Acts 1978, No. 590, p. 693, § 8.)

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§ 15-9-88. Construction of article.

This article shall be so construed as to effectuate its general purpose to make uniform the laws of this state with those states joining in the Interstate Agreement on Detainers Act. (Acts 1978, No. 590, p. 693, § 9.)